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OFFICE OF PETITIONS

CLAIRVOYANTE, INC.
874 GRAVENSTEIN HIGHWAY SOUTH, SUITE 14
SEBASTOPOL, CA 95472

In re Application of	:	
Candice Hellen Brown Elliott	:	
Application No. 10/024,326	:	DECISION GRANTING PETITION
Filed: December 14, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. CLRV-002	:	

This is a decision on the petition, filed November 30, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

It is noted that a request to rescind under 35 U.S.C. § 122(b)(2)(B)(ii) the previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed on May 31, 2002, without also filing a notice of foreign filing. However, the mere filing of a rescission of the nonpublication request without also filing a notice of foreign filing within forty-five days after the date the counterpart application was filed is not sufficient to avoid abandonment. Consequently, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on May 9, 2002, and that the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the

date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (571) 272-3204.

This application is being forwarded to Technology Center Art Unit 2673 for further prosecution.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley". The signature is fluid and cursive, with a long, sweeping line extending from the bottom of the name.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy